

REMARKS

Claims 1-7 were pending in the present application. Claim 5 has been canceled and new claims 8-10 added herein. Thus claims 1-4, and 6-10 are now pending. The Applicants respectfully request reconsideration and allowance of the present application in view of the above amendments and the following remarks.

The Applicants note with appreciation the acknowledgement of the claim for priority under section 119 and the notice that all certified copies of the priority documents have been received.

The Applicants acknowledge and appreciate receiving a copy of the form PTO-1449 submitted with the Information Disclosure Statement filed on December 11, 2003 on which the Examiner has initialed all listed items.

The specification has been objected to as allegedly failing to provide proper antecedent basis for the claimed subject matter, particularly with regard to the claimed support member attached to the cap closer and being shaped as a disk-shaped member. Applicants first note that 37 C.F.R. §1.75(d)(1) and MPEP 608.01(o) only require *clear support or* antecedent basis for the terms in the claims. It is further clearly established that the test of clarity is from the vantage of one of ordinary skill in the art. Notwithstanding, Applicants submit that, for example as noted in paragraph [0011] of Applicants' specification, the claimed support member can be embodied as a torque member, and further, the torque member is described as being of a disk shape, see, e.g., paragraph [0085], and lastly the support member is described as being attached to the closer, see, e.g., paragraph [0007]. Accordingly, Applicants respectfully submit that clear support is provided in the specification in the noted sections sufficient to allow one of ordinary skill in the art to ascertain the scope and meaning of the claims.

Claims 1-7 stand rejected under 35 USC §112, first paragraph, as being allegedly non-enabled. Without acknowledging the propriety of the rejection, claims 1, 2, and 4 have been amended to change the term *support member* to *torque member* in the interest of clarity and not for reasons related to patentability.

In order to establish and support a *prima facie* case of non-enablement, the Examiner must provide evidence that one of ordinary skill in the art would not have been able to make and use the invention based on a deficient disclosure. Applicants submit that the Examiner's burden has not been met in that 1) no evidence has been provided to show that one of ordinary skill in the art, when reading the term "support member", in light of the specification would not have been able to make and use the invention; and 2) for the reasons set forth above, e.g. since paragraphs [0011], [0085] and [0007] provide clear support for the claimed support member and attendant terms, the claims are properly enabled despite the lack of evidence in support of the assertion that they are not. As noted however, claims 1, 2, and 4 have been amended with regard to the term "support" member to expedite prosecution and improve clarity and not for reasons related to patentability.

Claims 1-4 stand rejected under 35 USC §103(a) as being allegedly unpatentable over Moore, U.S. Patent No. 4,320,853. The rejection is respectfully traversed.

Applicants respectfully challenge the taking of Official Notice with regard to the missing elements of Moore and request art be provided or the basis of rejection be withdrawn. Otherwise, Applicants respectfully submit that the Examiner is essentially admitting that the prior art fails to teach or suggest, for example, the claimed torque member made of resin with a liquid swelling property substantially equal to or less than the tether rotational support member.

Applicants further submit that Moore fails to teach or suggest other claimed features. For example, Moore fails to teach or suggest a tether mechanism including a tether rotation support

slidably supported *on an outer circumference of the torque member*. As noted, Moore fails to teach or suggest the torque member being made of a resin material having a liquid swelling property substantially equal to or less than that of the tether rotation support.

In the claimed cap device, for example in accordance with claim 1, a closer, a cover, a torque member and a tether mechanism with a tether rotation support are recited. The torque member primarily transmits rotational torque to the closer, and attaches the tether rotation support of the tether mechanism. Since the torque member is made of a resin material having a liquid swelling property substantially equal to or less than that of the tether rotation support, the cap device does not lower the transmission function of the rotational torque and the sliding performance of the tether mechanism, even if the cover and the tether rotation support of the tether mechanism are swelled with rain water as described in paragraph [0011] of the specification. Accordingly, the property of the material, contrary to the Examiner's assertions, are not merely a design choice, but rather are associated with the desirable result of enhanced operation of the claimed cap device by making the torque member of a material with the liquid swelling property *substantially equal to or less than that of the tether rotation support*.

In contrast, Moore, at best, describes a latching assembly 54, a retainer ring 44, and a tether 16. The retainer ring 44 attaches the tether 16 to cover member 42, but does not function as the claimed torque member. Quite the contrary, retainer ring 44 is spaced from the outer diameter section of the cover member 42 to form a groove 52 in which the annular end 28 of tether 16 is received to allow free rotation and provides no further function (see, e.g. Moore at col 3, line 1-4). At best, Moore describes a ratchet wheel 60 which engages a pawl 58, but these elements as can be seen from Fig. 5 of Moore, are, by necessity of allowing free rotation as noted above, in no way associated with the tether 16.

Accordingly, a *prima facie* case of obviousness has not properly been established in that in addition to the elements admitted as being missing from Moore and subject to Official Notice, Moore further fails to teach or suggest other claimed features as required. It is respectfully requested therefore, that the rejection of independent claim 1 be reconsidered and withdrawn.

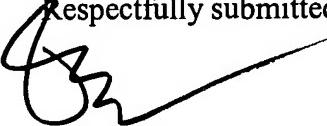
Claims 2-4, by virtue of depending from independent claim 1, are allowable for at least the reasons set forth hereinabove. It is respectfully requested therefore that the rejection of claims 2-4 be reconsidered and withdrawn.

The indication of allowable subject matter with regard to claims 5-7 is noted with appreciation. Applicants have submitted new claim 8 to incorporate the features of claim 5 and claim 1. New claim 8 should thus be allowable. New claims 9 and 10 correspond to claims 6 and 7 rewritten to depend from claim 8 and should also be allowable. Favorable consideration is respectfully requested.

In view of the foregoing, the applicants respectfully submit that the present application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

Please charge any unforeseen fees that may be due to Deposit Account No. 50-1147.

Respectfully submitted,



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